

49. On September 2, 1999, the Presiding Judge ("ALJ") denied Adams' Motion to Enlarge, Memorandum Opinion and Order, FCC 99M-49 (released September 3, 1999), on the grounds that there had been no showing of intent to deceive and that, "in view of Parker's basically accurate disclosures and the Bureau's actual knowledge in 1997 of prior adverse conclusions on Parker's character, there was no reasonable ability for Parker or Reading to deceive the Bureau." Id., ¶ 21, at 10.

50. In response to the denial of its Motion to Enlarge, on September 13, 1999, Adams sought permission to appeal ("Request for Permission to Appeal"). In making its request, Adams relied heavily on the argument that "[t]he standard for adding an issue . . . is significantly lower than the standard for actually resolving that issue one way or the other." [Request for Permission to Appeal, ¶ 17, at 8] On September 27, 1999, Reading filed its Opposition and the Bureau filed its Comments to Adams' Request for Permission to Appeal and, on October 4, 1999, Adams filed its Consolidated Reply.

51. On October 15, 1999, the ALJ determined that, on the state of the record at the time, there was a sufficient basis to warrant adding the issue to allow further inquiry. Memorandum Opinion and Order, FCC 99M-49 (released October 15, 1999), ¶ 18, at 8. The ALJ, therefore, ordered that the following issue be added:

To determine whether Micheal L. Parker engaged in a pattern of misrepresentation and/or lack of candor in failing to advise the

Commission of the actual nature and scope of his previously adjudicated misconduct and, if so, the effect of such misrepresentation and/or lack of candor on Reading's qualifications to remain a licensee.

Id. at 8. The ALJ further ordered that Adams would bear both the burden of proceeding and the burden of proof with respect to this issue. Id.

52. A hearing was held on this issue beginning on June 12, 2000, and the record was closed on August 18, 2000. Order, FCC 00M-52 (released August 18, 2000). As demonstrated below, the record developed at the hearing on this issue demonstrates a complete absence of deceptive intent by Parker that would support a lack of candor finding against him. The representations at issue were made in reasonable reliance upon the advice of counsel and included all the information requested by the applicable forms. Furthermore, the conclusion that such conduct does not support a lack of candor finding is consistent with the Commission's past practice, policy, and precedent. Accordingly, Reading is qualified to remain a Commission licensee.

2. The Previous Decisions

a. Religious Broadcasting

53. The proceedings underlying the Review Board's ultimate decision in Religious Broadcasting involved twelve mutually exclusive applications to construct a new television station in San Bernardino, California. One of the applicants in that proceeding was San Bernardino Broadcasting L.P. ("SBB"). [See Religious Broadcasting, 3 FCC Rcd at 4085 (Rev. Bd. 1988)] Parker was a paid consultant for SBB. [Parker Testimony, ¶ 5 (Reading Ex. 46), Tr. 1967:1-17, 2081:11-24]

54. As part of the Religious Broadcasting proceeding, the ALJ had added a real-party-in-interest issue regarding Parker's involvement in SBB's activities. [See Religious Broadcasting, 2 FCC Rcd 6561, ¶ 2 (ALJ 1987)] On that issue, the ALJ found that:

The evidence of record requires a negative finding against [SBB] on the real party-in-interest issue, mandating [SBB's] disqualification. In the event, however, that such a penalty is found to be too harsh on review, the Presiding Judge reaches the additional conclusion that [SBB] is not entitled to any integration credit for its proposal to integrate Ms. Van Osdel. Her past behavior in relying virtually totally on others makes it very unlikely that she will exercise control over the affairs of the station to a degree that would entitle her proposal to an integration credit.

[See Religious Broadcasting, 2 FCC Rcd 6561, ¶ 60] The ordering clause of that decision specifically found SBB not to be qualified and, therefore, dismissed SBB's application. [See Religious Broadcasting, 2 FCC Rcd 6561, ¶

324] Thereafter, SBB, along with eleven other applicants, filed timely exceptions to the ALJ's Initial Decision; accordingly, pursuant to Section 1.276(d) of the Commission's Rules, the ALJ's initial decision never became effective. [See 47 C.F.R. § 1.276(d); Religious Broadcasting, 2 FCC Rcd at 6595, n.19] At approximately that same time, SBB fired Parker. [Parker Testimony, Tr. 1938:4-21; 1967:1-17, 2010:21-2011:8, 2081:19-24]

55. Upon review, the Review Board dealt solely with comparative criteria and affirmed only that part of the ALJ's decision that refused to award integration credit to SBB.¹² [Religious Broadcasting, 3 FCC Rcd at 4090, ¶ 16 (stating in relevant part: "We affirm, con brio, the ALJ's refusal to award 'integration' credit to SBB"), and 4103-04, ¶ 63 (ordering clause makes no distinction between SBB's application and other applications denied on comparative grounds)] In denying integration credit to SBB, the Review Board held that SBB's putative structure "was and remains a travesty and a hoax" and that "SBB is a transpicuous sham." [Id., 3 FCC Rcd at 4090, ¶ 16, and 4091, ¶ 18]

56. SBB did not challenge the Review Board's resolution of the real-party-in-interest issue. [Parker Testimony, Tr. 2065:17-24, 2066:17-2067:16, 2068:17-2069:7, 2070:1-16, 2084:8-13; Religious Broadcasting, 5 FCC Rcd

¹² The Review Board confirmed this interpretation later that same year. [See Doylan Forney, 3 FCC Rcd 6330, n.1 (Rev. Bd. 1988) (in Religious Broadcasting, "the Board affirmed the Presiding ALJ's finding that San Bernardino Broadcasting, whose real-party-in-interest was a Micheal Parker, was entitled to no integration credit")]

6362, ¶ 2 (Reading Ex. 46, Attachment C)] Instead, SBB agreed to dismiss its application in exchange for payment of an \$850,000 settlement. [Parker Testimony, ¶ 5 (Reading Ex. 46); Religious Broadcasting, 5 FCC Rcd 6362, ¶ 2] The Review Board subsequently approved the settlement. [Parker Testimony, ¶ 5 (Reading Ex. 46); Religious Broadcasting, 5 FCC Rcd 6362, ¶ 4] Parker did not share in any of the settlement proceeds. [Parker Testimony, Tr. 1945:7-8, 1967:12-17, 2010:21-2011:8, 2070:18-21]

b. Mt. Baker Broadcasting

57. In Mt. Baker, the Commission initially issued Mt. Baker Broadcasting Co., Inc. ("Mt. Baker"), of which Parker was an officer, director, and a shareholder, a construction permit for KORC(TV), Anacortes, Washington. [See Mt. Baker, 3 FCC Rcd 4777, ¶ 2 (1988)] In December 1986, however, after having granted three prior extensions of the date to complete construction, the Commission's staff denied Mt. Baker's request for a further extension of time and cancelled its construction permit. [See Mt. Baker, 3 FCC Rcd 4777, ¶ 2]

58. On reconsideration, the staff reinstated Mt. Baker's construction permit on the condition that it file a license application within ten days and set a new expiration date for the reinstated construction permit. [See Mt.

Baker, 3 FCC Rcd 4777, ¶ 3] Mt. Baker, however, failed to file its license application. Upon expiration of the reinstated construction permit, a Commission inspector conducted an inspection which showed that KORC's facilities were constructed at variance from its construction permit. The Commission's staff concluded that Mt. Baker was operating without authority, cancelled the permit and ordered the station to cease operations. [See Mt. Baker, 3 FCC Rcd 4777, ¶ 4] In rejecting Mt. Baker's request for a forfeiture rather than cancellation of the construction permit, the Commission stated that "the facts clearly indicate an effort to deceive the Commission." [See Mt. Baker, 3 FCC Rcd at 4778, ¶ 8]

59. Mt. Baker's subsequent petition for reconsideration was denied and, thereafter, Mt. Baker applied for and was denied review. [See Mt. Baker, 3 FCC Rcd at 4778, ¶ 10] The case was never designated for hearing and no further enforcement action was ever initiated.

3. The Disclosures of the Previous Decisions.

60. Subsequent to the issuance of the final decisions in Religious Broadcasting and Mt. Baker, entities in which Parker held an interest filed applications with respect to: WHRC-TV, Norwell, Massachusetts (BTCCT-910724KG) (the "Norwell Application") [Reading Ex. 46, Attachment E]; WTVE(TV), Reading, PA (BTCCT-911113KH) (the "Reading Application" [Reading Ex. 46, Attachment F]; KVMD(TV), Twentynine Palms, CA

(BTCCT-920603KG) (the “Twentynine Palms Application”) [Reading Ex. 46, Attachment G]; and KCBI, Dallas, Texas (BALIB-9208100M) (the “Dallas Application”) [Reading Ex. 46, Attachment H] In each of those applications, the following question was asked and answered as indicated below:

- | | | | |
|-----|---|-----|----|
| 7. | Has the applicant or any party to this application had any interest in or connection with the following: | Yes | No |
| (a) | an application which has been dismissed with prejudice by the Commission? | X | |
| (b) | an application which has been denied by the Commission? | X | |
| (c) | a broadcast station, the license of which has been revoked? | | X |
| (d) | an application in any Commission proceeding which left unresolved character issues against the applicant? | | X |
| (e) | if the answer to any of the questions in 6 or 7 is Yes, state in Exhibit No. _____ the following information: | | |
| | (i) Name of party having such interest; | | |
| | (ii) Nature of interest or connection, giving dates; | | |
| | (iii) Call letters of stations or file number of application, or docket number; | | |
| | (iv) Location. | | |

[hereinafter “Question 7.”] [See Norwell Application (Reading Ex. 46, Attachment E at E24); Reading Application (Reading Ex. 46, Attachment F at

F12); Twentynine Palms Application (Reading Ex. 46, Attachment G at G9); Dallas Application (Reading Ex. 46, Attachment H at H10)]

61. Each applicant, having affirmatively answered that it (or another party to the application) had had an interest in or been connected with “an application which ha[d] been dismissed with prejudice by the Commission” and “an application which ha[d] been denied by the Commission,” was then required to state in an attached exhibit: the name of the party having such interest; the nature of interest or connection, giving dates; the call letters of stations or file number of application, or docket number; and its location. [See Norwell Application (Reading Ex. 46, Attachment E at E24); Reading Application (Reading Ex. 46, Attachment F at F12); Twentynine Palms Application (Reading Ex. 46, Attachment G at G9); Dallas Application (Reading Ex. 46, Attachment H at H10)]

62. As so required, each applicant attached the necessary exhibit and provided the specifically requested information. Each of the exhibits contained virtually the same description of the Religious Broadcasting and Mt. Baker decisions:

Although neither an applicant nor the holder of an interest in the application to the proceeding, Micheal Parker’s role as a paid independent consultant to San Bernardino Broadcasting Limited Partnership (“SBB”), an applicant in MM Docket No. 83-911 for authority to construct a new commercial television station on Channel 30 in San Bernardino, CA, was such that the general partner in SBB was held not to be the real party in interest to that applicant and that, instead, for purposes of the comparative analysis of SBB’s integration and

diversification credit, Mr. Parker was deemed such. See e.g. Religious Broadcasting Network et al., FCC 88R-38 released July 5, 1988. MM Docket No. 83-911 was settled in 1990 and Mr. Parker did not receive an interest of any kind in the applicant awarded the construction permit therein, Sandino Telecasters, Inc. See Religious Broadcasting Network, et al., FCC 90R-101 released October 31, 1990.

* * *

In addition, Micheal Parker was an officer, director and shareholder of Mt. Baker Broadcasting Co., which was denied an application for extension of time of its construction permit for KORC(TV), Anacortes, Washington, FCC File No. BMPCT-860701KP. See Memorandum Opinion and Order, FCC 88-234, released August 5, 1988.

[See Norwell Application (Reading Ex. 46, Attachment E at E30-31); Reading Application (Reading Ex. 46, Attachment F at F30); Twentynine Palms Application (Reading Ex. 46, Attachment G at G20-21); Dallas Application (Reading Ex. 46, Attachment H at H24-25)]¹³

63. On October 22, 1992, an amendment to the Dallas Application (the "Dallas Amendment") was filed, stating:

Two If By Sea Broadcasting ("Two If By Sea") has applied for authority to acquire Station KCBI from Criswell Center for Biblical Studies. As part of that application, Two If By Sea listed applications in which its officers, directors and applicants had held interests and which were dismissed at the request of the applicant. This will confirm that no character issues had

¹³ Similar descriptions of the Mt. Baker decision had previously appeared in a 1989 Form 315 application involving KWBB(TV), San Francisco, California [see West Coast United Application (Reading Ex. 46, Attachment I)] and in two 1989 applications for low power television stations (the "1989 Applications"). None of the 1989 Applications, however, referenced the Religious Broadcasting decision. [Parker Testimony, ¶ 11 and n.1 (Reading Ex. 46); West Coast United Application (Reading Ex. 46, Attachment I)]

been added or requested against those applicants when those applications were dismissed.

[Parker Testimony, ¶ 14 (Reading Ex. 46); Dallas Amendment (Reading Ex. 46, Attachment J)]

4. Advice of Counsel

64. During the late 1980's and early 1990's, Reading and other companies in which Parker had an interest generally used attorneys Bob Beizer, Clark Wadlow, and various of their associates, including Paula Friedman, as communications counsel. [Parker Testimony, ¶ 6 (Reading Ex. 46), Tr. 1896:4-1899:15; Wadlow Testimony, Tr. 1797:25-1803:3; Friedman Testimony, Tr. 2103:1-23] Mr. Wadlow specializes in communications law, practicing largely before the Federal Communications Commission and the courts with respect to communications related issues, and has so specialized for approximately 28 years. [Wadlow Testimony, Tr. 1798:21-1799:9] Both Mr. Beizer and Mr. Wadlow have served terms as President of the Federal Communications Bar Association and are highly regarded communications lawyers. [Parker Testimony, ¶ 6 (Reading Ex. 46); Wadlow Testimony, Tr. 1799:13-19] Ms. Friedman specialized in communications law and served as Executive Director of the Federal Communications Bar Association from February 1994 through July 1999. [Friedman Testimony, Tr. 2103:4-18] Messrs. Wadlow and Beizer were originally affiliated with Schnader, Harrison, Segal & Lewis, a Philadelphia law firm, and in early 1990, moved

their practices to Sidley & Austin. [Parker Testimony, ¶ 6 (Reading Ex. 46); Wadlow Testimony, Tr. 1802:8-1803:3] (For ease of reference, regardless of time frame, these communications counsel will be referred to as the "Sidley Attorneys.")

65. The Sidley Attorneys were aware of the Mt. Baker and Religious Broadcasting cases and, in fact, represented Inland Empire Television, another applicant in the Religious Broadcasting case. [Parker Testimony, ¶ 7 (Reading Ex. 46), Tr. 1941:19-1942:3, 1950:5-7; Wadlow Testimony, Tr. 1812:4-12, 1858:2-22] The Sidley Attorneys advised Parker that neither the Mt. Baker proceeding nor the Religious Broadcasting proceeding raised any character issues as to his qualifications to hold Commission licenses. [Parker Testimony, ¶¶ 7-8 (Reading Ex. 46), Tr. 2007:20-2008:17, 2012:20-2013:1, 2024:13-2025:14; Wadlow Testimony, Tr. 1806:10-24, 1830:15-21, 1854:23-1855:16; Letter from Clark Wadlow dated February 18, 1991 (Reading Ex. 46, Attachment D)]

66. Specifically, with respect to the Religious Broadcasting proceeding, attorney Wadlow advised Parker, in writing, that the case did not present questions as to Mr. Parker's qualifications. [Parker Testimony, ¶ 7 (Reading Ex. 46), Letter from Clark Wadlow dated February 18, 1991 (Reading Ex. 46, Attachment D); Wadlow Testimony, Tr. 1806:10-24, 1830:15-21, 1854:23-1855:16] Parker believes that he requested that letter in response to someone's questions as to his qualifications in connection with

Reading's efforts to emerge from bankruptcy. [Parker Testimony, ¶ 7 (Reading Ex. 46), Tr. 2000:1-2003:20; see also Wadlow Testimony, Tr. 1865:25-1866:24] There is no dispute that this letter was prepared for independent business reasons unrelated to any Commission application. [Parker Testimony, Tr. 2016:11-2019:13, 2024:13-2026:4]

67. In addition to what is indicated in his letter, attorney Wadlow orally advised Parker that the Review Board's decision dealt only with SBB's comparative qualifications and did not hold SBB to be disqualified. [Parker Testimony, ¶ 8 (Reading Ex. 46), Tr. 1992:24-1993:7, 1996:5-11, 2024:13-2025:14] Wadlow, at no time, either before or after his February 18, 1991, letter to Parker, advised Parker that the Religious Broadcasting case presented questions as to Mr. Parker's qualifications. [Wadlow Testimony, Tr. 1862:9-15]

68. Parker's and Wadlow's understanding of the legal implications of Religious Broadcasting was further confirmed when the Review Board approved a settlement payment of \$850,000 to SBB, because they believed that the Commission's rules did not permit a disqualified applicant to receive a settlement payment. [Parker Testimony, ¶ 8 (Reading Ex. 46), Tr. 1932:11-22, 1933:20-1934:6, 1935:17-1936:5; Religious Broadcasting, 5 FCC Rcd 6362 (Rev. Bd. 1990) (Reading Ex. 46, Attachment C); see also Wadlow Testimony, Tr. 1822:25-1823:9, 1829:19-1830:2, 1830:15-21, 1854:23-1855:16] This belief was correct. [See SL Communications, Inc. v. FCC, 168 F.3d 1354 (D.C. Cir.

1999) (affirming Commission decision rejecting a proposed settlement in which a party disqualified on real-party-in-interest grounds would have received a monetary payment; court distinguishes Allegan County Broadcasters, 83 FCC 2d 371 (1980), on the ground that Allegan involved a pending, untried issue before an ALJ, not an issue that had been through a hearing and decided adversely)]

a. **Religious Broadcasting**

69. The Religious Broadcasting disclosure first appeared in the Norwell Application filed July 24, 1991. [Parker Testimony, ¶ 12 (Reading Ex. 46); Norwell Application (Reading Ex. 46, Attachment E)] Mr. Parker did not draft the original language of the Religious Broadcasting disclosure and believes that it was written by an attorney. [(Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 1952:6-17] The attorneys listed on the Norwell Application were Brown, Nietert & Kaufman on behalf of Nick Maggos, the transferor, and Marvin Mercer on behalf of Parker's company (TIBS), the transferee. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 1897:12-1898:18, 1950:23-1951:6; see Norwell Application (Reading Ex. 46, Attachment E); Kravetz Testimony, Tr. 2342:6-2344:18] Marvin Mercer is a business lawyer and bankruptcy lawyer who was also representing Reading at the time. [Parker Testimony, ¶ 13 (Reading Ex. 46)] Mr. Mercer represented Parker's company, TIBS, in the transaction with Mr. Maggos. [Parker Testimony,

¶ 13 (Reading Ex. 46)] Parker believes that it is possible that Mercer prepared the exhibit with input from the Sidley Attorneys and/or Brown, Nietert & Kaufman. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 1952:6-17]

70. Parker did review the Norwell Application, including the exhibit responding to Question 7, and approved it based on the prior advice he had from the Sidley Attorneys that the Religious Broadcasting proceeding did not present an issue as to his qualifications. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 2024:13-23] Once the description had been prepared and used in an application that was deemed acceptable by the Commission, it was used thereafter in subsequent applications, subject to editorial review. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 1952:6-17; see generally Friedman Testimony, Tr. 2107:5-2109:17]

71. As for the absence of any reference to Religious Broadcasting in the 1989 Applications, those applications were prepared by the Sidley Attorneys, who were aware of and involved in the Religious Broadcasting case, and Parker relied on their decision with respect to the content of the 1989 Applications. [Parker Testimony, ¶ 11, n.1 (Reading Ex. 46), Tr. 1941:15-1942:3, 1949:21-1950:22; see West Coast United Broadcasting Co. ("West Coast United") Application (Reading Ex. 46, Attachment I); Wadlow Testimony, Tr. 1856:16-1858:22, 1863:19-1865:7] In that regard, the Question 7 exhibit to the West Coast United Application (Exhibit 3) was

prepared by one of the Sidley Attorneys, most likely William Andrle, and reviewed by Wadlow. [Wadlow Testimony, Tr. 1863:19-1865:3] Wadlow, however, does not recall why the West Coast United Application did not mention Religious Broadcasting. [Wadlow Testimony, Tr. 1863:19-1865:7] In any case, regardless of why references to Religious Broadcasting were not included in the 1989 Applications, Parker relied on his counsel for their preparation and their application of legal judgment in doing so. [Parker Testimony, ¶ 11 n.1 (Reading Ex. 46), Tr. 1941:15-1942:3, 1942:13-20]

b. **Mt. Baker**

72. The Mt. Baker disclosure first appeared in a March 2, 1989, West Coast United application prepared by the Sidley Attorneys [Parker Testimony, ¶ 11 (Reading Ex. 46), Tr. 1941:19-1942:20, 2012:20-2013:1; West Coast United Application (Reading Ex. 46, Attachment I); Wadlow Testimony, Tr. 1856:16-1858:22, 1863:19-1865:3] In that regard, West Coast United relied upon the Sidley Attorneys to determine what was required to respond to that application's Question 7. [Parker Testimony, ¶ 11 (Reading Ex. 46), Tr. 1941:19-1942:20, 1949:21-1950:22] In particular, Parker reviewed the description prepared by counsel but did not second-guess the attorneys' judgment about what information to provide. [Parker Testimony, ¶ 11 (Reading Ex. 46); Tr. 1941:19-1942:20, 1949:21-1950:22]

73. Again, once the narrative had been prepared and used in an application that was deemed acceptable by the Commission, the narrative was used thereafter in subsequent applications, subject to editorial review. [Parker Testimony, ¶ 11 (Reading Ex. 46), Tr. 2012:20-2013:1; see generally Friedman Testimony, Tr. 2107:5-2109:17]

c. The Dallas Amendment.

74. During the processing of the Dallas Application, Andree Ellis, the Commission staff person reviewing the application, requested further information about Mr. Parker's dismissed applications. [Parker Testimony, ¶ 14 (Reading Ex. 46), Tr. 1975:5-9, 1976:2-8; Kravetz Testimony, Tr. 2354:17-2355:2; Stipulation Concerning the Testimony of Andree Ellis and Kenneth Scheibel, ¶ 1(c) (Enforcement Bureau Ex. 2)] At the same time Ms. Ellis also requested similar information from the assigning party to the Dallas Application, Criswell Center for Biblical Studies. [Stipulation Concerning the Testimony of Andree Ellis and Kenneth Scheibel, ¶ 1(d) (Enforcement Bureau Ex. 2)] Ms. Ellis requested that each party file an amendment stating whether basic character issues had been sought or added against any of the applications identified as dismissed or denied. [Id., ¶ (c) - (d)] These requests were made simply as part of her usual custom and practice of requesting amendments in all cases where an applicant identifies a prior FCC application that had been dismissed. [Stipulation Concerning the

Testimony of Andree Ellis and Kenneth Scheibel, ¶ 1(c) (Enforcement Bureau Ex. 2)] The point of this practice appears to have been to clarify the language in Question 7(d) ("left unresolved character issues against the applicant") to mean either requested issues or added issues that had not been resolved.

75. In response to that request, either Parker or his assistant, Linda Hendrickson, asked Brown, Nietert & Kaufman to assist the applicant, TIBS, in determining what was needed and preparing the amendment. [Parker Testimony, ¶ 14 (Reading Ex. 46), Tr. 1977:16-23; Kravetz Testimony, Tr. 2354:17-2355:9] Thereafter, Eric Kravetz of Brown, Nietert & Kaufman called either Linda Hendrickson or Parker about the information requested. [Parker Testimony, ¶ 14 (Reading Ex. 46); Kravetz Testimony, Tr. 2354:17-2355:16]

76. In reliance upon the previous advice from the Sidley Attorneys about the Mt. Baker and Religious Broadcasting proceedings, Hendrickson or Parker indicated that there were no unresolved character issues pending when the applications to which Parker was a party were dismissed. [Parker Testimony, ¶ 14 (Reading Ex. 46), Tr. 1983:1-4, 2065:17-24, 2066:17-23; Kravetz Testimony, Tr. 2354:17-2355:16, 2356:6-23] Kravetz then prepared the amendment, which Parker signed and returned to be filed with the Commission. [Parker Testimony, ¶ 14 (Reading Ex. 46), Tr. 1983:5-9, 2030:14-22; Kravetz Testimony, Tr. 2354:17-2356:23; Stipulation Concerning

the Testimony of Andree Ellis and Kenneth Scheibel, ¶ 1(c) (Enforcement Bureau Ex. 2)]

C. Abuse of Process Issue Against Adams – Phase III

1. Monroe Communications Corporation

77. Monroe Communications Corporation (“Monroe”), was an Illinois corporation created in 1982 for the purpose of challenging the license renewal of Video 44, WSNS-TV, in Chicago, Illinois (“Video 44”). [Joint Request for Approval of Settlement Agreement (Reading Ex. 19); Order, FCC 92I-097 (released December 24, 1992) (Reading Ex. 22); November 22, 1999 Declaration of Howard Gilbert (“Gilbert Decl”), ¶ 2 (Reading Ex. 24); Gilbert Testimony, Tr. 2516:16-18] With one exception, all of the principals of Adams were also principals of Monroe. [Gilbert Testimony, Tr. 996:18-23]

78. The primary purpose of the Monroe application was to challenge the use of Channel 44 as a subscription television station. [Gilbert Decl., ¶ 2 (Reading Ex. 24); Gilbert Testimony, Tr. 1112:14-20, 1116:15-18, 1117:10-13] During the course of its challenge, Monroe discovered that Video 44 was airing indecent or obscene programming. [Gilbert Testimony, Tr. 1116:19-25] Monroe was represented in the Video 44 challenge by Bechtel & Cole (“B&C”). [Monroe/Bechtel & Cole Fee Arrangement Letter (Reading Ex. 20)]

79. The Commission granted Monroe's competing application in October 1990 and denied Video 44's motion for reconsideration in August 1991. See Harrisclope of Chicago, Inc., 5 FCC Rcd 6383 (1990), recon. denied, 6 FCC Rcd 4948 (1991). At the time, WSNS-TV was worth in excess of \$50 million. [Gilbert Testimony, Tr. 1130:22-1131:2] Monroe, however, never constructed or operated the station. [Gilbert Testimony, Tr. 2516:24-2517:7] Upon obtaining an FCC decision granting its application, Monroe maintained that it became concerned that it would not be able to obtain "Spanish language" programming for the station. [Gilbert Decl., ¶¶ 5-6 (Reading Ex. 24)] In light of that concern, and during the pendency of Video 44's appeal, Monroe agreed to settle with Video 44 and withdraw its application. [Gilbert Decl., ¶¶ 5-6 (Reading Ex. 24)]

80. Monroe never attempted to produce its own "Spanish language" programming. [Gilbert Testimony, Tr. 1127:18-1128:20] Monroe never attempted to obtain any other type of programming as a temporary measure until it could obtain a source of "Spanish language" programming. [Gilbert Testimony, Tr. 1129:10-1130:10]

81. Monroe received in excess of \$17 Million from Video 44 in settlement of that comparative renewal challenge. [Joint Request for Approval of Settlement Agreement, Attachment 1, ¶ 5 (Reading Ex. 19 at 12-13); Order, FCC 92I-097 (released December 24, 1992), ¶ 3 (Reading Ex. 22 at 2)] The Monroe settlement was approved by the Commission by Order, FCC

92I-097 (released December 24, 1992). [Order, FCC 92I-097 (released December 24, 1992) (Reading Ex. 22)] Monroe received the \$17+ Million payment in two installments in the first half of 1993. [Joint Request for Approval of Settlement Agreement, Attachment 1, ¶ 6 (Reading Ex. 19 at 13-14); Order, FCC 92I-097 (released December 24, 1992), ¶ 3 (Reading Ex. 22 at 2); Harriscopes of Chicago, Inc., 8 FCC Rcd 2753 (1993)]

82. Howard Gilbert ("Gilbert"), Secretary and Vice President of Adams Communications Corporation ("Adams"), believes that, although Monroe never actually constructed or operated the station for which it had applied, the Monroe venture was successful. [Gilbert Testimony, Tr. 1116:3] Gilbert, a long-time attorney who considers himself a "very skilled lawyer," is and always has been Adams' attorney with respect to all corporate matters. [Gilbert Testimony, 1014:16-17, Tr. 2519:20-2520:3] Gilbert measured the "success" of the Video 44 challenge by the fact that it resulted in a Commission precedent against subscription television broadcasting and pornographic programming. [Gilbert Testimony, Tr. 1115:3-1116:3] This testimony omitted any mention of the fact that Monroe "received a huge sum of money" in the settlement as a reason the Video 44 challenge could be considered a success. [Gilbert Testimony, Tr. 1007:3-4]

2. Home Shopping

83. At approximately the same time Monroe was receiving that "huge sum of money" for settling the Video 44 challenge, its principals became concerned with "home shopping" programming. [Gilbert Testimony, Tr. 1114:2-9] At the start of that year, the Commission adopted a Notice of Proposed Rulemaking to address the issue of whether home shopping broadcast stations were serving the public's interest. [Notice of Proposed Rulemaking, 8 FCC Rcd 660 (released January 28, 1993)] As part of that review, the Commission solicited public comments on the home shopping issue. [Notice of Proposed Rulemaking, 8 FCC Rcd 660, ¶ 16 (released January 28, 1993)] Although the Monroe/Adams principals followed the developments of the Commission's review of the home shopping issue, neither Monroe/Adams nor any of its principals submitted any comments to the Commission with respect to that issue. [Gilbert Testimony, Tr. 1133:19-22, 2468:9-2469:5] Gilbert described his group as public interest crusaders, but conceded that, apart from the Monroe/Adams applications, no one in the group had done anything to advance public service in broadcasting other than by making financial contributions to organizations working on that issue. [Gilbert Testimony, Tr. 1110:17 – 1111:10]

84. In a Report and Order released on July 19, 1993, the Commission concluded that home shopping stations serve the public interest.

[Home Shopping Report and Order, 8 FCC Rcd 5321 (1993)] Adams was aware of that ruling. [Gilbert Testimony, Tr. 1057:13-1058:18]

85. Notwithstanding the Commission's ruling, in or around mid-1993, Monroe/Adams decided to pursue a comparative renewal challenge to a television station broadcasting "home shopping" programming. [Gilbert Testimony, Tr. 2473:15-2474:7] To that end, in or about July 1993, Gilbert instructed B&C to locate home shopping channels that were coming up for renewal. [Gilbert Testimony, Tr. 1121:16-25, 2471:10-16] On or about July 16, 1993, B&C provided Monroe/Adams with a list of all home shopping channels throughout the country whose licenses were coming up for renewal. [Letter from Harry Cole to Howard Gilbert dated July 16, 1993 (Adams Ex. 66 at 1-2)]

3. Adams Communications Corporation

86. Adams was formed for the purpose of challenging the renewal of television stations airing home shopping programming. [Gilbert Decl., ¶ 7 (Reading Ex. 24)] Although Adams takes the position that home shopping *programming*, generally, does not serve the public interest, it concedes that a home shopping *station* could still provide sufficient other local programming and public service to serve the public interest. [Gilbert Testimony, Tr. 1060:14-19, 1041:20-1042:5, 2468:9-2469:5, 2473:15-20, 2497:22-2498:6]

87. Adams' selection of which home shopping station to challenge was based solely on which station's license was the soonest to come up for renewal. [Gilbert Testimony, Tr. 1123:9-1124:8] Adams was indifferent as to which home shopping station it challenged or whether the station it challenged was profitable. [Gilbert Testimony, Tr. 1065:21-1066:3, 1120:20-1121:13] Nor did Adams care where in the country the "home shopping" station it would challenge was located. [Gilbert Testimony, Tr. 1119:7-1124:9]

88. On November 23, 1993, Adams was incorporated in Massachusetts. [Articles of Organization (Reading Ex. 71); Gilbert Testimony, Tr. 2474:8-10; 2517:8-10] With the exception of Elinor Woron, a minor shareholder, all of the principals of Adams were also principals of Monroe. [Gilbert Testimony, Tr. 996:18-23; Amendment to Application (Reading Ex. 10 at 54)] With the exception of Elinor Woron, who resided in Boston, Massachusetts, all of the principals of Adams are from the area in or around Chicago, Illinois. [Adams' June 30, 1994 Application for Channel 51, Reading, Pennsylvania ("Application") (Reading Ex. 10 at 5-8); Amendment to Application (Reading Ex. 10 at 54)]

89. On August 31, 1998, Adams was involuntarily dissolved by the Commonwealth of Massachusetts for failing to file Annual Reports. [Certificate of Dissolution (Reading Ex. 72)]

4. Adams' Aborted Challenge of Channel 66, WHSH in Marlborough, Massachusetts

90. According to the list provided by B&C, the next station to come up for renewal in time for Adams to challenge was station WHSH, Channel 66 in Marlborough, Massachusetts ("Channel 66"), near Boston, on December 1, 1993. [List of full-power television stations licensed to subsidiaries of the Home Shopping Network (Adams Ex. 66 at 2); Gilbert Testimony, Tr. 2474:8-18] Adams pursued its contemplated challenge for Channel 66 by hiring a real estate broker to locate a possible antenna site, hiring "a young man and his cohorts" to tape two weeks worth of WHSH's programming, reviewing that tape, and talking to local residents. [Gilbert Testimony, Tr. 2474:19-2465:20]

91. Adams was, ultimately, unable to locate a suitable transmitter site and, in late February 1994, abandoned its efforts to challenge Channel 66. [Gilbert Testimony, Tr. 2475:21-2476:11, 2478:15-17] Adams never made any effort to buy Channel 66 outright. [Gilbert Testimony, Tr. 2530:13-16] Adams never made any effort to determine the value of Channel 66. [Gilbert Testimony, Tr. 2530:17-19] Adams made no effort to determine the potential cost of buying Channel 66 outright. [Gilbert Testimony, Tr. 2530:20-22] Adams never made any effort to determine Channel 66's profitability. [Gilbert Testimony, Tr. 2530:23-25]

5. Adams' Challenge of Channel 51, WTVE in Reading, Pennsylvania

92. After Channel 66, the next home shopping station to come up for renewal was WTVE, Channel 51, in Reading, Pennsylvania. [Gilbert Testimony, Tr. 1042:11-21] Adams chose to challenge WTVE because it was the first home shopping station to come up for renewal after Adams decided to abandon its challenge for Channel 66. [Gilbert Testimony, Tr. 1123:15-1124:2, 2476:12-18]

93. None of the Adams principals have ever lived in or around Reading, Pennsylvania. [Gilbert Testimony, Tr. 1067:2-4] Nor does Adams have an interest in public service broadcasting in Reading, Pennsylvania, beyond its purported interest in public service broadcasting in general. [Gilbert Testimony, Tr. 1019:19-22. Indeed, Adams' principals apparently do not particularly care for the City of Reading. [Gilbert Testimony, Tr. 1119:17-18 ("This isn't a great place to be, Reading. It's hard to get to, all kinds of things.")]

94. On June 30, 1994, Adams filed its application against WTVE. [Application (Reading Ex. 10)] At the time it submitted its application, Adams estimated that it would cost \$4.5 million to construct and operate the requested facility for three month without revenue. [Application (Reading Ex. 10 at 18); Gilbert Testimony, Tr. 1109:12-19] That estimate was subsequently increased to \$7 million. [Amendment to Application (Reading Ex. 10 at 55)]

95. Prior to the time Adams filed its application, Gilbert never personally watched WTVE. [Gilbert Testimony, Tr. 1064:24-1065:1] Although, at all relevant times, Gilbert was aware that every television station has to make its public inspection file available to interested parties, Adams did not review WTVE's public inspection files. [Gilbert Testimony, Tr. 1011:18-21, 2541:16-18]. Nor did Adams retain an expert or consultant to evaluate WTVE's programming. [Gilbert Testimony, Tr. 2540:19-22]

96. Prior to filing its application, Adams never prepared a business plan for operation of a station in Reading. [Gilbert Testimony, Tr. 1109:22-24] Adams never discussed specific staffing needs for the station. [Gilbert Testimony, Tr. 1107:15-109:2] Adams never made any effort to determine the value of WTVE. [Gilbert Testimony, Tr. 1066:4-9] Adams never made any effort to determine WTVE's profitability, even though Adams knew that Reading had recently been in bankruptcy. [Gilbert Testimony, Tr. 1110:13-16, 1065:21-1066:3]

97. Prior to filing its application, Adams made no effort to buy WTVE outright or even to determine the potential cost of buying WTVE outright. [Gilbert Testimony, Tr. 2541:19-22] In fact, Adams has never sought to buy outright any television station, anywhere, or even sought to locate any television stations that might be for sale. [Gilbert Testimony, Tr. 2542:1-6] Adams' stated reason for not attempting to purchase a station is

that doing so would not result in an FCC precedent against home shopping.
[Gilbert Testimony, Tr. 1118:21-1119:4]

a. Gilbert's Survey

98. Between February and June 1994, Gilbert, on behalf of Adams, made 3 or 4 trips to Reading. [Gilbert Testimony, Tr. 2475:21-2476:11, 2476:19-24, 2478:15-17, 2538:7-14] At no time during any of these trips did Gilbert watch WTVE. [Gilbert Testimony, Tr. 1064:24-1065:1] During these trips, Gilbert informally interviewed 30 to 40 people. [Gilbert Testimony, Tr. 2476:19-2477:1, 2538:15-17] The interviews were conducted at business establishments, including malls and restaurants. [Gilbert Testimony, Tr. 2538:18-20] Gilbert did not conduct any interviews at peoples' homes. [Gilbert Testimony, Tr. 2538:21-24] Gilbert did not ask for the names of the people he interviewed, nor did he make a written record of the interviews. [Gilbert Testimony, Tr. 2538:25-2539:5] Gilbert stated that none of the people he interviewed were aware of WTVE. [Gilbert Testimony, Tr. 2539:6-10]

**b. Adams' Unsuccessful Attempt To Tape
WTVE's Programming**

99. In May 1994, Gilbert hired Paul Sherwood to tape the "home shopping channel." [Gilbert Testimony, Tr. 2483:13-2484:10, 2539:3-5; Sherwood Testimony, Tr. 2139:11-15; 2154:17-2156:1] Gilbert was referred to Mr. Sherwood by Gilbert's daughter who worked with Sherwood's brother in

Chicago. [Gilbert Testimony, Tr. 2484:11:16; Sherwood Testimony, Tr. 2138:13-22] Sherwood is not a professional media consultant but a computer systems consultant. [Sherwood Testimony, Tr. 2137:11-16, 2149:22-24] Sherwood has no expertise in analyzing or evaluating the content of television programming. [Sherwood Testimony, Tr. 2149:25-2150:6] Nor does he have any expertise in analyzing or evaluating the public service performance of television stations. [Sherwood Testimony, Tr. 2150:7-14]

100. At the time Gilbert hired Sherwood for the taping job (and at the time of the taping), Sherwood lived in Chester Springs, Pennsylvania, approximately 30 miles from Reading. [Sherwood Testimony, Tr. 2138:23-2139:1, 2147:7-17, 2157:5-15] At the time Gilbert hired Sherwood for the taping job (and at the time of the taping), Sherwood lived in a location serviced by Suburban Cablevision. [Sherwood Testimony, Tr. 2147:7-2148:4] At that time, Suburban Cablevision did not carry WTVE. [TV Times from the Reading Eagle for the week of May 29 to June 4, 1994 (Adams Ex. 11)]

101. To the best of Mr. Sherwood's recollection, Gilbert's initial instructions were to tape the "home shopping channel." [Sherwood Testimony, Tr. 2139:11-2140:8] In fact, to the best of Mr. Sherwood's recollection, Gilbert never mentioned WTVE or Channel 51. [Sherwood Testimony, Tr. 2139:16-2140:8]¹⁴ Gilbert never told Sherwood the precise

¹⁴ It is not clear whether Gilbert knew the call sign or channel number of the station whose license Adams intended to challenge. Several years after the taping, Gilbert described the station as "Station WNET (T.V.) in Redding,

purpose for the taping. [Sherwood Testimony, Tr. 2144:6:-11, 2145:10-20, 2146:13-17]

102. As instructed by Gilbert, on June 1, 1994, Sherwood recorded 24 hours of the "home shopping channel." [Sherwood Testimony, Tr. 2148:9-13; Gilbert Testimony, Tr. 2485:16-2486:3] The June 1, 1994 recording was not of WTVE but of the "Home Shopping Club" cable channel. [Mattmiller Testimony, ¶ 5 (Reading Ex. 47 at 1-2); Gilbert Testimony, Tr. 2477:14-2478:12; 2488:20-2489:7; Gilbert Decl., ¶ 13 (Reading Ex. 24 at 5)] The June 1, 1994 recording contains not a single station identification for WTVE or Channel 51 in Reading, but rather contains hourly identifications for the "Home Shopping Club." [Mattmiller Testimony, ¶ 5, 7 (Reading Ex. 47 at 1-2)] In addition to the hourly identifications of the "Home Shopping Channel," the June 1, 1994, recording contains a number of longer network identifications, lasting approximately 30 seconds, consisting of a depiction of the Home Shopping Club logo, the words "Home Shopping Club" being sung to a jingle, and the following voiceover announcement:

"You're watching America's original shop at home television service, bringing you 24 hours of savings, fun and excitement every day. Live from Tampa Bay, Florida, it's the Home Shopping Club."

[Mattmiller Testimony, ¶ 8 (Reading Ex. 47 at 2)] The June 1, 1994 recording contains not a single commercial advertisement, but rather

Pennsylvania." [Letter from Gilbert to Swanson, dated April 22, 1999]

contains hourly promotional announcements for upcoming segments of the Home Shopping Club. [Mattmiller Testimony, ¶ 6 (Reading Ex. 47 at 2)]

103. Gilbert claims to have reviewed the June 1, 1994 recording. [Gilbert Testimony, Tr. 2487:13-22] Based on his review of the June 1, 1994 recording, and despite the “painfully evident” fact that the June 1, 1994 recording was not of WTVE, Gilbert instructed Sherwood to continue to record the programming, 24 hours a day, for the period from June 13 to June 30, 1994. [Gilbert Testimony, 2477:14-2478:12, 2489:23-2490:4; Sherwood Testimony, Tr. 2149:2-13; Mattmiller Testimony, ¶ 3, Attachment B (Reading Ex. 47 at 1, B1-B3)]

104. As instructed by Gilbert, Sherwood recorded, 24 hours a day, of the “home shopping channel” for the period from June 13 through June 30, 1994. [Sherwood Testimony, Tr. 2148:9-13; Gilbert Testimony, Tr. 2489:23-2490:4; Mattmiller Testimony, ¶ 3, Attachment B (Reading Ex. 47 at 1, B1-B3)] To the best of Mr. Sherwood’s recollection, during this period, he spoke once with Gilbert. [Sherwood Testimony, Tr. 2149:2-16]

105. Mr. Sherwood forwarded the June 13 through June 30, 1994 recordings to Gilbert in two separate batches. [Gilbert Testimony, Tr. 2491:6-10] Gilbert claims to have received the first batch (June 13 through June 21) “a number of days before the end of June.” [Gilbert Testimony, Tr. 2491:11-16] Gilbert claims to have reviewed the first batch of recordings in

(Reading Ex. 57)]

“fast forward” and stopping the “fast forward” when he heard the PSA music and reviewing the PSAs in real time. [Gilbert Testimony, Tr. 1134:25-1135:14, 2491:17-2492:1]

106. The June 13-June 21 batch of recordings were not of WTVE but of the “Home Shopping Club” cable channel. [Mattmiller Testimony, ¶ 5 (Reading Ex. 47 at 1-2); Gilbert Testimony, Tr. 2477:14-2478:12; Gilbert Decl., ¶ 13 (Reading Ex. 24 at 5)] Like the June 1, 1994 recording, the June 13-June 21 batch of recordings contain not a single station identification for WTVE or Channel 51 Reading, but rather contain hourly identifications for the “Home Shopping Club.” [Mattmiller Testimony, ¶ 5, 7 (Reading Ex. 47 at 1-2)] In addition to the hourly identifications of the “Home Shopping Channel,” the June 13-June 21 batch of recordings contain numerous longer network identifications, lasting approximately 30 seconds, consisting of a depiction of the Home Shopping Club logo, the words “Home Shopping Club” being sung to a jingle, and the following voiceover announcement:

“You’re watching America’s original shop at home television service, bringing you 24 hours of savings, fun and excitement every day. Live from Tampa Bay, Florida, it’s the Home Shopping Club.”

[Mattmiller Testimony, ¶ 8 (Reading Ex. 47 at 2)] The June 13-June 21 batch of recordings contains not a single commercial advertisement, but rather contains hourly promotional announcements for upcoming segments of the Home Shopping Club. [Mattmiller Testimony, ¶ 6 (Reading Ex. 47 at 2)]

107. Gilbert received the second batch of recordings (June 22 through June 30) from Mr. Sherwood after Adams had filed its application. [Gilbert Testimony, Tr. 2493:9-12; Adams Ex. 77 at 1] Like the others, the June 22-June 30 batch of recordings were not of WTVE, but of the "Home Shopping Club" cable channel. [Mattmiller Testimony, ¶ 5 (Reading Ex. 47 at 1-2)] In all respects the June 22-June 30 batch of recordings mirrored the content of the June 1, 1994 tape and the June 13-June 21 batch of recordings. [Mattmiller Testimony, ¶¶ 3-8 (Reading Ex. 47 at 2)]

108. The only PSAs reflected in any of the recordings are those produced for national consumption by the Missing Children Help Center located in Tampa, Florida. [Mattmiller Testimony, ¶ 9 (Reading Ex. 47 at 3)] Of the missing children highlighted in these PSAs, only 4 are identified as missing from or last seen in Pennsylvania and, of those 4, only one is identified as missing from or last seen in the Philadelphia-Wilmington-Atlantic City combined metropolitan area. [Mattmiller Testimony, ¶ 14, Attachment F (Reading Ex. 47 at 3, F1-F2)] None of the missing children is identified as missing from or last seen in Reading, Pennsylvania. [Mattmiller Testimony, ¶ 15 (Reading Ex. 47 at 4)]

c. Adams' Proposed Transmitter

109. On June 29, 1994, Adams preliminarily offered to enter into an option for the prospective use of a transmitter owned by Conestoga Telephone

& Telegraph Company ("Conestoga"). [Adams' Letter of Intent (Adams Ex. 68); Gilbert Testimony, Tr. 2480:11-22] Adams' Letter of Intent indicated Adams' desire to have an option to lease space to affix a UHF antenna to Conestoga's existing tower, and to occupy 500-600 square feet of an existing equipment building at the site. [Adams' Letter of Intent (Adams Ex. 68)] Conestoga subsequently advised Adams that any lease concerning the use of the Conestoga tower would be contingent on the ability to obtain proper zoning permits to construct an additional building or expand the existing structure. [Conestoga Letter dated August 8, 1996 (Reading Ex. 74)]

110. As of August 1996, more than two years after the Letter of Intent was sent to Conestoga, Adams and Conestoga had still not come to an agreement regarding Adams' use of the proposed transmitter site. [Conestoga Letter dated August 8, 1996 (Reading Ex. 74)] Thus, by letter dated August 8, 1996, Conestoga advised Adams that "[a]t this point, we have no agreement whatsoever regarding this site." [Conestoga Letter dated August 8, 1996 (Reading Ex. 74); Gilbert Testimony, Tr. 2531:1-23] By letter dated August 21, 1996, Gilbert, on behalf of Adams, responded: "I am totally aware of the obligations stated in your letter of August 8, 1996. . . . Please forward me an executed copy of the Restated Option Agreement and License/Lease Agreement with the appropriate check and we can finally be on our way after all the many, many years." [Adams Letter dated August 21, 1996 (Reading Ex. 75); Gilbert Testimony, Tr. 2532:9-2533:5]

111. The Conestoga Option Agreement was not executed until December 1996. [Adams Letter dated December 20, 1996, and Adams Check No. 1036 (Adams Ex. 71 at 1 and 3)] The 1996 Option Agreement was for a period of three years to begin with delivery of the executed agreement and payment to Conestoga. [Option Agreement, ¶ 1(A) (Adams Ex. 69 at 2)] Adams delivered the executed Option Agreement and payment to Conestoga under cover of a letter dated December 20, 1996. [Adams Letter dated December 20, 1996, and Adams Check No. 1036 (Adams Ex. 71 at 1 and 3)]

112. The Option Agreement was never renewed or extended during its effective term and, on or about December 20, 1999, expired by its own terms. [Gilbert Testimony, Tr. 2535:18-24; Adams Check No. 1080 (Reading Ex. 76); Option Agreement, ¶ 1(A) (Adams Ex. 69 at 2); Adams Letter dated December 20, 1996, and Adams Check No. 1036 (Adams Ex. 71 at 1 and 3)] On May 17, 2000, shortly before the Phase III hearing in this case, Adams sought to renew its option for the prospective use of the Conestoga tower. [Gilbert Testimony, Tr. 2535:18-24; Adams Check No. 1080 (Reading Ex. 76)]

6. Adams' Dealings with Telemundo

113. Anne Swanson is an attorney with the law firm of Dowl Lohnes & Albertson in Washington, D.C. On behalf of her client, Telemundo, she spoke with Harry Cole, counsel for Adams, on April 30, 1999 about the possibility of settling this comparative renewal proceeding. [Swanson

Testimony, Tr. 2215:8-2217:6, 22119:12-2222:13, 2301:16-2302:1; Ms. Swanson's handwritten notes ("Swanson Notes") (Reading Ex. 52 at 4-5)] During their initial conversation, Ms. Swanson asked about Adams' level of interest in settlement, and at what amount its interest might ripen into acceptance. Mr. Cole informed her that Gilbert liked to do his own negotiating. [Swanson Testimony, Tr. 2215:11-17, 2219:3-24; Swanson Notes (Reading Ex. 52 at 4)] Later that day, Ms. Swanson again spoke with Mr. Cole, at which time he advised her that, while Gilbert planned to pursue the application, he would not say "no" to settlement. [Swanson Testimony, Tr. 2219:18-2221:8; Swanson Notes at 5]

114. Thereafter, that same day, April 30, 1999, Swanson telephoned Gilbert. [Swanson Testimony, Tr. 2219:18-2220:15, 2222:14-2224:18, 2302:2-14; Dow Lohnes & Albertson Telephone Report for April 30, 1999 (Reading Ex. 51 at 2)] During that conversation, Swanson asked Gilbert for a settlement figure and Gilbert responded that he could not give her a figure because Adams had not valued the station. [Swanson Testimony, Tr. 2225:18-2226:9; Swanson Notes (Reading Ex. 52 at 5)] Gilbert then committed Adams to pay one-third of the expense of obtaining an appraisal of Station WTVE. (Swanson Testimony, Tr. 2223:12-2224:18, 2230:17-2231:4; Swanson Notes (Reading Ex. 52 at 5); Letter from Gilbert to Swanson dated April 22, 1999 (Reading Ex. 57)] Gilbert also indicated that Adams would be

reasonable with respect to a possible settlement. [Swanson Notes (Reading Ex. 52 at 5)]

115. On June 2, 1999, Ms. Swanson received the appraisal. [Swanson Testimony, Tr. 2265:5-2266:8; Fax Transmittal Cover Sheet dated June 2, 1999 (Reading Ex. 62); Bond & Pecaro Appraisal (Adams Ex. 75 at 2-23)] The next day, Swanson faxed the appraisal to Cole along with a letter reconfirming that Adams had agreed to pay for a third of the cost. [Letter from Swanson to Cole dated June 3, 1999 (Adams Ex. 75)]

116. On June 7, 1999, Gilbert, Mr. Cole, Ms. Swanson and possibly Ann Gaulke, Telemundo's Vice President of Network Affiliate Relations, participated in a telephone conference to discuss the appraisal and settlement. [Swanson Testimony, Tr. 2268:6-2274:7, Swanson Notes (Reading Ex. 52 at 10-11)] Of particular concern during the June 7 conference was Reading's lack of involvement in the appraisal and settlement negotiations since the process required the participation of all three parties – the two applicants and the “white knight.” [Swanson Testimony, Tr. 2270:18-2272:2] At that time, Gilbert made it clear that he did not want his time wasted and that Adams was only interested in pursuing serious settlement negotiations. [Swanson Testimony, Tr. 2273:9-20; Swanson Notes (Reading Ex. 52 at 11)]

117. On July 14, 1999, Gilbert contacted Ms. Swanson to express Adams' interest in a Telemundo affiliation. [Swanson Testimony, Tr.

2277:11-2278:6; Swanson Notes (Reading Ex. 52 at 12)] The next day, Gilbert and Ms. Swanson further discussed the possibility of Telemundo providing Adams with Spanish language programming in the event that Adams' application were to be successful. [Swanson Testimony, Tr. 2281:2-2282:19; Swanson Notes (Reading Ex. 52 at 14)] And, on July 16, 1999, Ms. Swanson spoke with Mr. Cole and with Ms. Gaulke about "Adams' interest in affiliation and settlement." [Billing Records (Reading Hearing Ex. 50 at 10)] The Adams-Telemundo affiliation issue was, ultimately, tabled to avoid the possibility of a lawsuit by Reading which, at the time, operated WTVE as a Telemundo affiliate station. [Swanson Testimony, Tr. 2286:1-12]

118. On July 16, 1999, Ms. Swanson once again discussed settlement with Adams. [Swanson Testimony, Tr. 2284:10-2285:5; Swanson Daytimer for July 16, 1999 (Reading Ex. 54 at 4)]

7. Adams' Counsel

119. At all times in the preparation of its aborted challenge to Channel 66, Marlborough, Massachusetts, and its present challenge of WTVE, Adams has been represented by B&C. [Gilbert Testimony, Tr. 1018:15-24, 1042:11-1043:20] Adams' fee agreement with B&C provides that B&C attorneys are to be paid at a rate that is \$100 per hour less than their usual hourly rates with respect to the prosecution of Adams' comparative

application (i.e., \$125/hour versus \$225/hour). [Adams Fee Agreement (Reading Ex. 21); Gilbert Testimony, Tr. 1019:19-22] The fee agreement further provides that B&C attorneys would be paid twice their usual hourly rate (i.e., \$450/hour) in the event that Adams' application is granted or if the application is dismissed in a settlement on terms that are "economically favorable," including a settlement for only reasonable and prudent expenses [Adams Fee Agreement (Reading Ex. 21)] Although Adams' fee agreement with B&C was signed on June 30, 1999, it memorializes an oral agreement that was reached in 1993. [Gilbert Testimony, Tr. 1019:19 – 1020:19]

120. B&C had previously represented Monroe in the Video 44 case. [Monroe Fee Agreement (Reading Ex. 20); Gilbert Testimony, Tr. 1012:8 – 1013:6] Monroe paid B&C "a substantial bonus" for its work in the Video 44 case. [Gilbert Testimony Tr. 1014:13-14, 1015:11-16]

III. Conclusions Of Law

A. The Comparative Issue

1. Introduction

121. On the comparative issue, Reading's claim to a renewal expectancy will be dispositive if awarded. If no renewal expectancy were awarded, then the comparison between Reading and Adams would be governed by the Commission's First Report and Order in Implementation of